U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18967041

Date: OCT. 29, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center determined that the Petitioner qualifies for the underlying classification and that her proposed endeavor has substantial merit. Nevertheless, the Director denied the petition, concluding that the evidence did not establish that the proposed endeavor is of national importance, that she is well positioned to advance her endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts her eligibility, arguing that the Director did not properly weigh the evidence and erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this

classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit

documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Director concluded that the Petitioner qualifies for the underlying classification as a professional holding an advanced degree. The record contains evidence that the Petitioner earned a four-year foreign degree in administration in 2004. In addition, she completed a foreign graduate course in business administration in 2005 and a foreign graduate program in agribusiness in 2007, the latter of which resulted in the award of a "Curso de Mestrado" certificate.

In support of the U.S. equivalency of this education, the Petitioner submitted an evaluation from [redacted], a professor at the [redacted] University[redacted] Because USCIS does not accept equivalency evaluations of experience, we consider the evaluation for the academic equivalency portion of the evaluation only. We further acknowlege an advisory opinion of the Petitioner's eligibility under the national interest waiver framework, which the Petitioner also obtained from [redacted] This advisory opinion does not not analyze the Petitioner's foreign education and therefore is not probative of its U.S. equivalency.

In considering the academic portion of the [redacted]'s evaulation, we observe that it largely contains templated language found in numerous evaluations provided by other evaluation service providers and submitted on behalf of other petitioners. The only information specific to the Petitioner's education are the titles of her academic programs and the names of her universities. Although [redacted] states that

the courses completed and the number of credit hours earned indicate the equivalency of her education, he offers little explanation of the Petitioner's courses and credit hours and does not explain how they are the equivalent of a U.S. education. These generalized conclusions are insufficient to establish the U.S. equivalency of the Petitioner's education. Additionally, we question [redacted]s knowledge of the Brazilian academic system and how his qualifications as a professor in the United States enable him to credibly opine on the equivalency of Brazilian academic degrees. For these reasons, we conclude that this evaluation is of little probative value in this matter.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, the evaluator does not demonstrate specific knowledge of the Brazilian education system, the Petitioner's specific university, or how her credit hours, grades, and the content of her courses translate to a U.S. education. Nor does the evaulator offer sufficient analysis or support for the conclusions contained in the evaluation. As such, we conclude that this evaluation is insufficient to establish the academic equivalency of the Petitioner's foreign education.

Based on the information contained in the record, the Petitioner has not met her burden to establish the U.S. equivalency of her foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner should be prepared to address this evidentiary shortcoming in any of her future filings. Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit https://www.aacrao.org/edge (last visited Oct. 29, 2021). The database indicated that the Petitioner's four-year "Título de Bacharel" in administration is the equivalent of a U.S. bachelor's degree. In addition, the database reflected that a "Stricto Sensu" transcript in conjunction with the award of a certificate in a "Curso de Mestrado" in agribusiness is the equivalent of a U.S. master's degree.

While the Petitioner has not provided sufficient evidence to support a finding that her foreign degrees are equivalent to U.S. degrees, we will accept and rely upon the information found in the AACRAO EDGE database to conclude that she holds the equivalent of a U.S. bachelor's and master's degree. Accordingly, the Petitioner qualifies for the underlying classification as a member of the professions holding an advanced degree. The remaining issue to be determined is whether she qualifies for a national interest waiver. For the following reasons, we agree with the Director that the evidence does not establish that the Petitioner qualifies for a national interest waiver. Although we do not discuss each piece of evidence individually, we have reviewed and considered each one.

In the initial filing, the Petitioner stated that she intends to continue using her expertise and knowledge in agribusiness, entrepreneurship, and business management to work as an entrepreneur in the United States in the agribusiness industry. In addition, she stated that she will help U.S. companies seize new market and investment opportunities. As this very limited and general description offered insufficient detail concerning her proposed endeavor, the Director issued a request for evidence (RFE), informing the Petitioner that the descriptions of her proposed endeavor were insufficient and that she had not established the substantial merit or national importance of her endeavor.

In her RFE response, the Petitioner provided additional detail concerning her proposed endeavor, including that she will open a Florida-based company that will combine a recycling business with farm consulting services. Specifically, her company will resell recycled packaging as well as provide consulting services to farmers and farming businesses.

In her updated professional plan and statement, she described her proposed endeavor as follows:

> [O]pen up a new business based on environmental sustainability to reduce landfill waste and climate change . . . My business plan's base is to combine a recycling business with farm consulting services . . . [T]he recycled packings used in the supply chain of the food, hygiene, and cleaning industry will be resold as products based on the intrinsic component's value . . . [M]y business will provide consulting services to farmers and farming business to help feed the country safely, responsibly, and sustainably . . . I will provide eco-friendly services/products to U.S. businesses and individuals in an economical and sustainable [sic] to further develop the United States' agricultural sector.

The Petitioner also offered a "Definitive Statement," in which she described her proposed endeavor as "providing technical and scientific advice and service on issues of agribusiness and recycling" and that she will promote her endeavor through her startup company. Her proposed endeavor's purpose is to "use scientific-based training and technologies to provide solutions that assist U.S. farmers and food handlers in producing safe, healthy, and quality food products to feed the American people, without excess carbon emissions. [She will also] focus on recycling to lessen the amount of waste . . . ." The Petitioner further stated that her "goal is to reduce climate change, thereby reducing public health costs."

In her RFE response, the Petitioner also submitted a business plan that paradoxically contained no suggestion that her Florida-based company would engage in agribusiness consulting. Furthermore, although the plan indicated that the recycling facilities industry and waste collection services presented a great opportunity, the Petitioner's business plan did not include proposed activities related to recycling as was stated elsewhere in the RFE response. Rather, the Petitioner stated in her business plan that her company will focus on creating and selling environmentally friendly cleaning and personal hygiene products, specifically soaps and detergents.

In the decision, the Director noted that the inconsistency between the Petitioner's proposed endeavor of starting a company that combines a recycling business with farm consulting services and her business plan that involves creating and selling environmentally friendly soaps and detergents. On appeal, the Petitioner provides little additional clarity concerning her endeavor, but rather appears to ignore the Director's concerns about inconsistencies in the proposed endeavor. The Petitioner's appeal brief referenced forming a company that combines a recycling business with farm consulting services and does not mention activities related to creating and selling eco-friendly soaps and detergents. In Dhanasar, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." Id. at 889. We conclude that the Petitioner has not identified her specific endeavor.

In addition to not identifying her specific endeavor, the Petitioner has not persuasively established that any of her proposed activities will have national importance. The Petitioner argued that the proposed endeavor has national importance because it will help U.S. companies to capitalize on agribusiness projects in Brazil and Latin America. Although she stated that her endeavor will assist U.S. companies to seize new market and investment opportunities through facilitating cross-border transactions, negotiations, and agribusiness partnerships between the United States, Brazil, and Latin America, the Petitioner's proposed endeavor activities do not appear to involve any cross-border business. Furthermore, the Petitioner has not identified any U.S. companies that she will work with who seek agribusiness projects in Brazil or Latin America. Even if this were established, the Petitioner would still need to provide specifics concerning how these business activities would be on a scale so substantial as to rise to the level of national importance.

Returning to [redacted]'s advisory opinion letter, we note that his analysis concerning national importance also hinges upon the existence of cross-border business, but he provides little discussion of how the proposed endeavor would actually incorporate any cross-border activity. As [redacted] has offered little other reasoning for why the endeavor has national importance, his opinion is of little probative value in the analysis of the Petitioner's eligibility under the first prong of the Dhanasar framework. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. Matter of Caron Int'l, *Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id.

The Petitioner claimed that she will provide the United States with quality and sustainable agribusiness practices that will lead to an increase in recycling, reduce landfill waste, and decrease climate change. She repeatedly referenced her experience, education, and knowledge concerning agribusiness and entrepreneurship as the reason she will be able to provide these benefits to the United States. However, the Petitioner's personal and professional qualifications relate to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." Id. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under Dhanasar's first prong.

The Petitioner highlighted her past successes in Brazil in order to suggest that her proposed endeavor will have a similar impact. She asserted that through her strategic and informed methods, she has increased earnings and reduced gas emissions. However, she has not provided sufficient details concerning what her methods are, nor has she offered corroborative evidence to substantiate the claimed results. Although she claimed to have "designed, developed, and implemented sustainable structures that allow farmers to achieve consistent revenue growth, improved and continuous performance, cost reduction tendencies, lower negative emissions, while feeding the world – namely by driving competitive advantage" (errors in the original), she did not state what structures she designed, developed, and implemented, nor did not she offer specific examples or data on any performance improvements, cost reductions, emissions levels, or food production. Similarly, she claimed to have created groundbreaking results for the agribusiness industry through her project on [redacted] In examining the record, we find little evidence to support a finding that she has achieved groundbreaking results in the field, but rather note only a sale agreement for [redacted] products entered into in Brazil in February 2020, which occurred after this petition was filed.

The Petitioner submitted numerous recommendation letters, many of which were authored by representatives of the companies with whom the Petitioner's Brazilian employer had agricultural-related contracts. The authors praise the Petitioner's personal and professional qualifications and set forth generalized examples of the value she offered in various business transactions. Several authors describe the benefits the Petitioner produced for her own employer, citing statistics concerning its profit, credit line, and productivity. It is not apparent how the Petitioner's clients would have knowledge of another company's statistics in this regard. As such, without further corroborating evidence to substantiate such claims, we question the accuracy of them and whether the letters were independently written. Furthermore, none of the authors demonstrate knowledge of the Petitioner's proposed endeavor, nor do they assert that the Petitioner's accomplishments and contributions extended beyond her specific employer and clients. Accordingly, we conclude that these letters offer little probative value in this matter. Generalized conclusory statements that do not identify a specific impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. Id. See also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In Dhanasar, we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." See Dhanasar, 26 I&N Dec. at 889. The Petitioner made numerous claims concerning how her proposed endeavor is nationally important, including that her endeavor will impact the nation in the following ways:

- Promote the economy directly and indirectly;
- Serve U.S. businesses, sustainability, and recycling;
- Provide jobs;
- Feed the U.S. population;
- Increase the U.S. gross domestic product (GDP) and tax revenue;
- Streamline the U.S. business ecosystem;
- Contribute directly to U.S. companies, schools, hospitals, and individuals by helping to improve their business and quality control practices; and
- Offer economic convenience and agility by securing the success of U.S. farmers in foreign markets, such as Brazil.

While we acknowledge these claims, the record does not contain sufficient evidence to substantiate them. For instance, the Petitioner has not explained how her business will create a revenue stream so substantial as to affect the GDP or tax revenue. Similarly, the Petitioner has not demonstrated how her assistance to U.S. companies will be on such a scale as to directly or indirectly impact the national economy. Furthermore, the Petitioner has not shown that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers. Although she indicated in her business plan that she will hire nine employees to work in her company to create and sell eco-friendly cleaning and hygiene products, she has not explained what these nine positions are, the duration of the employment, how much she will pay employees, and most importantly, how the creation of nine jobs would rise to the level national importance. While the Petitioner claimed that she will allow U.S.

companies to expand into foreign markets and that she can secure their success, she has not provided details concerning how she would do this or identified any U.S. farmers or companies seeking business in Brazil or Latin America. Additionally, the Petitioner has not explained what streamlining the U.S. business ecosystem means or how she will do it. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890.

The Petitioner submitted numerous industry articles and reports; however, as these articles do not discuss or address the proposed endeavor, they offer little to this analysis. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." Id. at 889. Although the fields of entrepreneurship and agribusiness are important, as is climate change and recycling, the Petitioner has not offered sufficient or persuasive evidence of how her proposed endeavor is nationally important, as opposed to the field in general.

On appeal, the Petitioner relies upon the evidence she previously submitted to reassert her eligibility. As previously noted, the Petitioner has not offered sufficient evidence to support her claims that the endeavor has national importance. Moreover, the Petitioner did not address the Director's concerns about the inconsistencies in her proposed endeavor. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework. Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.